

**AFFIDAVIT OF SERVICE**

State of UTAH

County of SALT LAKE

U.S. District Court

Case Number: 2:03CV-0294 Court Date: 3/16/2006

Plaintiff:

**THE SCO GROUP, INC.**

vs.

Defendant:

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

For:

Nathan E. Wheatley

SNELL & WILMER

15 W. S. Temple St.

Suite 1200

Salt Lake City, UT 84101

Received by ANDERSON PROCESS SERVICES, L.C. on the 8th day of March, 2006 at 5:43 pm to be served on **SCOTT LEMON, 2897 LANCDE CIR, HEBER CITY, UTAH 84032.**

I, Christopher D. Anderson, being duly sworn, depose and say that on the **8th day of March, 2006 at 9:45 pm, I:**

**Individually Served** the within named person with a true copy of the **SUBPOENA** with the date and hour endorsed thereon by me, pursuant to state statutes.

**Additional Information pertaining to this Service:**

3/9/2006 8:57 pm Service Made: 3-8 9:45pm

I am over the age of 18 and have no interest in the above action.



Subscribed and Sworn to before me on the 10th day of March, 2006 by the affiant who is personally known to me.

Sheila Anderson  
NOTARY PUBLIC

Christopher D. Anderson

Christopher D. Anderson  
Process Server

**ANDERSON PROCESS SERVICES, L.C.**  
**230 West 200 South**  
**Suite 2302**  
**Salt Lake City, UT 84101**  
**(801) 619-1110**  
Our Job Serial Number: 2006000725

Service Fee: \$102.00

**Issued by the  
UNITED STATES DISTRICT COURT**

DISTRICT OF UTAH

**SUBPOENA IN A CIVIL CASE**CASE NUMBER<sup>1</sup>: 2:03CV-0294

United States District Court, District of Utah

*[Signature]*  
 Title Process Server  
 Date 3-8-06 Time 9:45pm  
 P/S [Signature] The SCO Group, Inc.

*[Signature]*  
 Title Process Server  
 Date 3-8-06 Time 9:45pm  
 P/S [Signature]

V.

**International Business Machines Corporation**

To: Scott Lemon

**HOME**2897 Lance Circle  
Heber City, UT 84032**WORK**HumanXtensions L.L.C.  
483 West Airport Road, Suite: A5  
Heber City, Utah 84032

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. The testimony will be recorded by the following method(s):

☒ stenographic; ☐ sound; ☒ sound and visual

PLACE OF DEPOSITION

Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Gateway Tower West,  
Salt Lake City, Utah 84101

DATE AND TIME

March 16, 2006  
9:00 a.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

*[Signature]*Attorney for International Business  
Machines Corporation

March 8, 2006

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Nathan E. Wheatley, Snell & Wilmer L.L.P., 15 West South Temple, Suite 1200, Gateway Tower West,  
Salt Lake City, Utah 84101 (801) 257-1900

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE		PLACE
SERVED		
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subject a person to undue burden.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of March, 2006, a true and correct copy of the  
Foregoing – Affidavit of Service - was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

Robert Silver  
Edward Normand  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504

/s/ Peter H. Donaldson